



General Assembly

February Session, 2012

Raised Bill No. 70

LCO No. 882

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Referred to Committee on General Law

Introduced by:
(GL)

***AN ACT CONCERNING FAIRNESS IN CERTAIN COMMERCIAL
CONSTRUCTION CONTRACTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-158j of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012*):

3 (a) Each construction contract shall contain the following
4 provisions: (1) A requirement that the owner pay any amounts due
5 any contractor, subcontractor or supplier in a direct contractual
6 relationship with the owner, whether for labor performed or materials
7 furnished, not later than thirty days after the date any written request
8 for payment has been made by such contractor, subcontractor or
9 supplier; (2) a requirement that the contractor pay any amounts due
10 any subcontractor or supplier, whether for labor performed or
11 materials furnished, not later than thirty days after the date the
12 contractor receives payment from the owner which encompasses labor
13 performed or materials furnished by such subcontractor or supplier;
14 [and] (3) a requirement that the contractor shall include in each of its
15 subcontracts a provision requiring each subcontractor and supplier to
16 pay any amounts due any of its subcontractors or suppliers, whether

17 for labor performed or materials furnished, not later than thirty days
18 after the date such subcontractor or supplier receives a payment from
19 the contractor which encompasses labor performed or materials
20 furnished by such subcontractor or supplier; (4) a requirement that, for
21 all pending or approved change orders or directives, the minimum
22 allowable rate of overhead and profit to be paid to any contractor or
23 subcontractor who performs such work shall be not less than fifteen
24 per cent of the total value of such work; and (5) a requirement that at
25 any time the cumulative sum of the total pending construction change
26 orders or other pending change directives exceeds five per cent of the
27 original total contract or subcontract cost, the contractor or
28 subcontractors who have performed work under such pending change
29 orders or directives are relieved of any express or implied duty to
30 perform any additional changes to the work under the terms of such
31 contract or subcontract.

32 (b) Each payment requisition submitted in accordance with the
33 requirements of subsection (a) of this section shall include a statement
34 showing the status of all pending construction change orders, other
35 pending change directives and approved changes to the original
36 contract or subcontract. Such statement shall identify the pending
37 construction change orders and other pending change directives, and
38 shall include the date such change orders and directives were initiated,
39 the costs associated with their performance and a description of any
40 work completed. As used in this section, "pending construction change
41 order" or "other pending change directive" means an authorized
42 directive for extra work that has been issued to a contractor or a
43 subcontractor, but an approved change order has not yet been issued
44 and payment can not be processed for such extra work.

45 (c) (1) If payment is not made by an owner in accordance with the
46 requirements of subdivision (1) of subsection (a) of this section or any
47 applicable construction contract, such contractor, subcontractor or
48 supplier shall set forth its claim against the owner through notice by
49 registered or certified mail.

50 (2) If payment is not made by a contractor in accordance with the
51 requirements of subdivision (2) of subsection (a) of this section or any
52 applicable construction contract, the subcontractor or supplier shall set
53 forth its claim against the contractor through notice by registered or
54 certified mail.

55 (3) If payment is not made by a subcontractor or supplier in
56 accordance with the provisions of subdivision (3) of subsection (a) of
57 this section, the subcontractor or supplier to whom money is owed
58 shall set forth its claim against the subcontractor or supplier who has
59 failed to comply with the provisions of said subdivision (3) through
60 notice by registered or certified mail.

61 (4) (A) Ten days after the receipt of any notice specified in
62 subdivisions (1), (2) and (3) of this subsection, the owner, contractor,
63 subcontractor or supplier, as the case may be, shall be liable for interest
64 on the amount due and owing at the rate of one per cent per month.
65 Such interest shall accrue beginning on the date any such notice is
66 received. In addition, such owner, contractor, subcontractor or
67 supplier, upon written demand from the party providing such notice,
68 shall be required to place funds in the amount of the claim, plus such
69 interest of one per cent per month, in an interest-bearing escrow
70 account in a bank in this state. [provided]

71 (B) Each owner that enters into a contract under this section and
72 fails or neglects to make payment to a contractor for labor and
73 materials supplied under a contract, as required pursuant to
74 subdivision (1) of subsection (a) of this section, shall, upon notice by
75 any person who has not been paid by the contractor for such labor and
76 materials supplied in the performance of the work under the contract,
77 place funds in the amount of the claim, plus such interest of one per
78 cent per month, in an interest-bearing escrow account in a bank in this
79 state. Any such owner, contractor, subcontractor or supplier, upon
80 receiving notice under subparagraph (A) or (B) of this subdivision,
81 may refuse to place the funds in escrow on the grounds that the party

82 making such demand has not substantially performed the work or
83 supplied the materials according to the terms of the construction
84 contract. In the event that such owner, contractor, subcontractor or
85 supplier refuses to place such funds in escrow and such owner,
86 contractor, subcontractor or supplier is found to have unreasonably
87 withheld payment due a party providing such notice, such owner,
88 contractor, subcontractor or supplier shall be liable to the party making
89 demand for payment of such funds and for reasonable attorneys' fees
90 plus interest on the amount due and owing at the rate of one per cent
91 per month. In addition, any owner, contractor, subcontractor or
92 supplier who is found to have withheld payments to a party providing
93 such notice in bad faith shall be liable for ten per cent damages.

94 (d) No payment may be withheld from a subcontractor or supplier
95 for work performed or materials furnished because of a dispute
96 between a contractor and another contractor, subcontractor or
97 supplier.

98 (e) This section shall not be construed to prohibit progress payments
99 prior to final payment of the contract and is applicable to all
100 subcontractors and suppliers for material or labor whether they have
101 contracted directly with the contractor or with some other
102 subcontractor on the work. Each owner that enters into a contract
103 under this section and fails or neglects to make payment to a
104 contractor for labor and materials supplied under a contract, as
105 required pursuant to subdivision (1) of subsection (a) of this section,
106 shall, upon demand of any person who has not been paid by the
107 contractor for such labor and materials supplied in the performance of
108 the work under the contract, promptly pay the person for such labor or
109 materials. Demand for payment shall be served on the owner and a
110 copy of each demand shall be sent to the contractor by certified mail,
111 return receipt requested to any address at which the owner and
112 contractor conduct business. If the owner fails to make such payment,
113 the person making the demand shall have a direct right of action
114 against the owner in the superior court for the judicial district in which

115 the project is located. The owner's obligations for direct payments to
116 the contractor, subcontractors or suppliers giving notice pursuant to
117 this section shall be limited to the amount owed to the contractor
118 pursuant to subdivision (1) of subsection (a) of this section by the
119 owner for work performed under the contract at the date such notice is
120 provided. Any payment made directly by the owner to a subcontractor
121 or supplier for labor or materials, which is the subject of a direct
122 contractual relationship between such subcontractor or supplier and a
123 contractor, shall discharge the obligation of such contractor to the
124 extent of such payment.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2012	42-158j
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Statement of Purpose:

To require timely payment pursuant to certain commercial construction contracts.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]